



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

09/661

B-178198

AUG 30 1973

United States Department of
Agriculture
Forest Service, Region 6
Box 3623
Portland, Oregon 97208

BEST DOCUMENT AVAILABLE

Attention: Mr. George D. Breitmeier
Regional Fiscal Agent

Gentlemen:

This is in reply to your letters of March 5 and April 10, 1973, requesting our advice regarding the proper disposition of funds due under contract No. 01374 awarded September 22, 1971, to Kenneth I. Walters for thinning timber in the Malheur National Forest (Oregon).

The record indicates that the contractor rendered performance for several months, during which time he received partial payments under the contract subject to ten percent retention (totaling \$381.65) to insure job completion. On August 29, 1972, the contract was terminated for default, and subsequent reprocurement of the defaulted work resulted in excess costs to the Government of \$824.22. The record further indicates the existence of a valid wage claim, notice of which was first received by your Department on August 24, 1972, in the amount of \$521.50. There is also on file an assignment dated September 23, 1971, in favor of the U. S. National Bank of Oregon of all moneys due under the contract.

The existence of the assignment cannot operate to defeat the Government's right to recover its reprocurement costs. "It is well established that . . . by assignment the assignee could acquire no greater rights than its assignor," and that the Government has the right to use retained funds to complete a contract when a contractor defaults, notwithstanding the claims of a contractor's assignee. The National City Bank of Evansville v. United States, 143 Ct. Cl. 154, 163, 163 F. Supp. 146 (1958); B-165016, February 24, 1959. Furthermore, it has been recognized that unpaid laborers have an equitable right to be paid from contract retainages, Pearlman v. Reliance Insurance Company, 371 U.S. 132 (1962); Hadden v. United States, 132 Ct. Cl. 529 (1955); compare 35 Comp. Gen. 104 (1955), and we note that the contract in this case contained provisions allowing

b7a
S. I. M. 2/15/73
S. I. M. 5/3

FILE COPY - COMP GEN

Heil

B-178198

the Government to withhold funds pursuant to the Contract Work Hours Standards Act and the Service Contract Act of 1965 to satisfy unpaid wage claims.

Here, the record shows that funds were retained to insure completion of the work under the contract. However, in B-161460, May 25, 1967, copy enclosed, we recognized that a contracting agency may apply such funds to satisfy wage claims under the Service Contract Act before it satisfies its own claim for excess procurement costs. See B-175222, April 4, 1973. Accordingly, the retainage may be applied to the wage claim in accordance with B-161460, supra.

Sincerely yours,

Paul G. Demblin

For the Comptroller General
of the United States

Enclosure

REST DOCUMENT AVAILABLE